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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Report submitted by Katarina Tomaševski, Special Rapporteur
on the right to education

Addendum

Mission to the United Kingdom of Great Britain
and Northern Ireland (England)
18-22 October 1999

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I. INTRODUCTION

1. The Special Rapporteur's mission to the United Kingdom followed her mission to Uganda from 26 June to 2 July 1999 (E/CN.4/2000/6/Add.1 of 9 August 1999), and was inspired by the United Kingdom's rights-based education, which had just been introduced. The Government invited the Special Rapporteur to visit the country on 12 August 1999 and the dates for the mission were settled for 18 to 22 October 1999. United Nations budgetary constraints limited the mission to five working days. This confined the Special Rapporteur, and a human rights officer of the Office of the High Commissioner for Human Rights accompanying her, to London and its surroundings. With the exception of the international dimensions of the right to education and the United Kingdom's international human rights obligations, this report deals only with England and does not encompass Northern Ireland, Scotland or Wales, which have legal and policy frameworks for education that are partially or wholly distinct from those of England. References to domestic educational law, policy or practice thus refer to England alone.

2. The present report reflects constraints of time and space: a five-day mission is a very short period in which to assess the human rights dimensions of such a complex subject as education, while the necessity to limit this report to 28 pages forced the Special Rapporteur to highlight only some of the issues she would have wished to address, dealing with each of them as briefly as possible.

3. The objectives of the mission arose from the Special Rapporteur's focus on the international and domestic facets of the right to education in conjunction, and were motivated by two important developments in the United Kingdom.

> On the international level, the United Kingdom's precedent-setting shift to rights-based education constituted a focus of the mission. Strengthened by the Government's debt relief initiatives, rights-based education represents a milestone in international development cooperation.
>
> Domestically, the Government has declared education to constitute its highest priority. Different from its development cooperation policy, the Government's domestic vocabulary has not included rights-based education, which provided an interesting theme for the Special Rapporteur to explore.

4. During her mission, the Special Rapporteur met with numerous officials of the Department for Education and Employment, the Department for International Development, the Office for Standards in Education (OFSTED), the Social Exclusion Unit at the Cabinet Office, and the Commission for Racial Equality. She also met with Her Majesty's Chief Inspector of Prisons and officials of the Education Services at Her Majesty's Prison Service, as well as visiting the Orchard Lodge Resource Centre, an education-intensive institution for boys and young men who are (or are at risk of being) in conflict with the law. Besides these meetings, which were arranged by the Government, the Special Rapporteur met with representatives of non-governmental organizations working in education, development and human rights, and with representatives of teachers' and students' associations, as well as with individual child and adult learners.

5. The Special Rapporteur would like to acknowledge with gratitude the effort made by the Government to arrange the schedule according to her wishes, even if all could not be accommodated.

6. The Special Rapporteur's efforts to elucidate the human rights dimensions of education must have tested the patience of many or all of her interlocutors, and she would like to record her sincere appreciation of their willingness to look at education from the human rights perspective. The history of education is incomparably longer than the notion of the right to education and rights in education, and the Special Rapporteur is fully aware of the novelty of issues which her mandate has broached. She therefore deems that her mission and this report constitute the beginning of a dialogue rather than a self-contained activity.

II. THE CONTEXT: EDUCATION BETWEEN THE PAST AND THE COMING MILLENNIUM

7. At the time of the Special Rapporteur's visit, a sense of economic optimism was palpable. The inflation rate was the lowest since 1963, the unemployment rate the lowest since 1980. The notorious stagflation of the 1970s (a combination of high inflation and high unemployment) seemed relegated to history. Buoyant tax revenue was expected to result in a sizeable budget surplus and speculation was rife as to the use to which it would be put. Education was a much championed claimant for additional funding. Not a day passed without one or another facet of education being in the news - the shortage, stressful professional lives and low salaries of teachers, the extension of pre-school education to three-year-olds, the real or virtual improvements in school-leaving exams. This high visibility of education in public life fuelled constant questioning of any and every facet of education. The turn of the millennium triggers a look back and a look forward, further increasing interest in the past and future of education. The current English educational system has been shaped by its long historical tradition and by changes in the periods 1979-1996 and 1997-1999, rather than by new notions of the right to education and human rights in education. Its historical legacy has not been rights-based and this has influenced the vision of education for the next millennium.

A. Historical legacy

8. The long history of education in England and the export of its educational models at their different stages to different corners of the world provide a fascinating background for studying the contemporary model of education.

9. Primary schooling draws its beginnings from the founding of the Society for Promoting Christian Knowledge in 1698, when it consisted simply of learning the catechism by heart. The expansion of what was subsequently termed "popular education" through Sunday schools reinforced the religious grounding of education. The 1802 Health and Morals of Apprentices Act institutionalized this practice, obliging all apprentices to attend religious education classes each Sunday and adding that they should receive some instruction in reading, writing and 'rithmetic (the three Rs) during their working hours.

10. A legislative proposal placed before the House of Commons in 1807 to provide two years of free primary education in parochial schools was rejected on two grounds: unwillingness to bear the anticipated costs and fears that education might make "the lower orders" discontented. Decades of disagreement about religion postponed adoption of the first Education Act until 1870. It introduced education for children aged 5 to 12 in two types of schools, non-denominational schools governed by school boards (with the parental right to withdraw children from religious education) and denominational voluntary schools.

11. Secondary schools reach much further back into history, to Winchester (founded in 1382) and Eton (founded in 1440). Such schools were alternatively called grammar schools (libera schola grammaticalis, originating from the teaching of classical languages) or colleges (stemming from establishment as a collegiate foundation). These earlier, elite, academic secondary schools (based on the values of elitism and excellence) and the later religious, popular schools bifurcated access to education, schools were segregated by religion and class. The pre-Second World War broadening of access to primary education and the post-war all-encompassing compulsory education did not go as far as equalizing the orientation and quality of education to which learners could gain access. Such a stratified system of schooling has continued ever since. Today's vocabulary retains unique features of Englishness: an English public school would be defined as private in all other countries, what is called a public school elsewhere corresponds to a State school in England.

B. Changes in the period 1944-1996

12. The 1944 Education Act introduced universal access to primary education for all, free of charge, four years before such a right was affirmed in the Universal Declaration of Human Rights. On this basis, the post-war education strategy initially prioritized equality of opportunity. Making education compulsory meant that parents had a duty to ensure that their children received education, and this understanding has continued ever since.[1] The corollary emphasis on parental duties and rights has hampered the notion of the right of the child to education and the child's rights in education.

13. The post-war approach to education was affected by the economic crisis of the 1970s, when the previously constant increase in public investment in education was halted and then diminished. Priorities for education were diverted from the goal of equality of opportunity to that of reversing the United Kingdom's economic decline and enhancing national and individual economic competitiveness. Diminished public funding reduced both the availability and the accessibility of free-of-charge schooling. Market-based education broadened parents' choices, they were, alongside employers, defined as consumers of education.[2] Private investment in education was stimulated by pursuit of excellence and by high rates of return to investment stemming from enhanced individual competitiveness.

14. The year 1988 was marked by two big changes: the introduction of the uniform national curriculum,[3] followed by uniform assessments of learners' performance. Attainment targets were (and are) specified and are verified through testing at ages 7, 11 and 14 (defined as key stages), culminating in the General Certificate of Secondary Education (GCSE). The GCSE is a uniform examination for all learners, assessing all levels of performance on a common scale. The testing, grading and ranking of all learners was followed by the ranking of schools by

examination results. School ranking is based on the percentage of pupils passing the GCSE examination in five subjects at the highest grades (A-C) and is accompanied by wide publicity in the mass media for school league tables.

15. Testing nudges (many would say pressurizes) schools to compete amongst themselves for their position in the league tables, thereby enhancing the overall performance. Individual schools whose learners perform excellently are ranked the highest and those whose learners are underperforming sink to the bottom. Research has shown that schools' prominent position in the league tables derives from their practice of selecting pupils whose family and social background, as well as their previous attainment, makes them likely to perform well. The consequence of the ranking of schools is huge parental demand for schools ranked high, whose limited supply enables them to determine and uphold criteria for admission. Parental preference is unlikely to favour "sink schools", which have to admit any learners, even those expelled from other schools. The relationship between poor schools and poor learners is only partially addressed by public funding because the key to funding (both private and public) is performance.

16. The result is a rigid stratification within the educational system. Although all resident children are encompassed by compulsory schooling, the type and quality of education they receive vary enormously.

17. A great deal of change was introduced into education in the period 1988-1996 along these lines. The 1996 Education Act aimed to bring together and systematically amend all statutory regulations relating to education. Subsequent to the change of Government in 1997, further amendments have been made. The pace of change between 1988 and 1996 was rapid, many changes were controversial and quite a few were resisted. The former Government promised a five-year moratorium on new initiatives, but the new Government has continued with rapidly-paced, highly demanding changes.

C. Government strategy

18. Education is guided by the overall aim of achieving a knowledge-driven economy, favouring "science and innovation, creativity and enterprise, skills and knowledge", and moving towards commercialization of British science[4] to contribute to wealth-creation. The objective is to create a world-class education service so as to match the performance of those countries which the United Kingdom sees as its main international competitors. Alongside general economic competitiveness, the existence of a market in education enhances education-specific competitiveness. The estimated annual value of the United Kingdom's export of education varies between £5 billion and £12 billion, with all estimates pointing to its increase. Further increase is planned, with the ambition for the United Kingdom to conquer 25 per cent of the global market share in higher education.[5] Education is also expected to contribute to the eradication of poverty in the country; it is seen as the key to employment and employment is seen as the path out of poverty.

19. This emphasis on a knowledge-driven economy requires altering the heritage of adult illiteracy and innumeracy, higher in England than in other Western European countries - 7 million people are estimated not to have any qualification whatsoever.[6] This heritage is attributed to the neglect of public education in the previous decades. Investment in basic

education and the insistence on enhanced performance by all learners is seen as the foundation for both individual economic self-sustenance and international competitiveness. The White Paper entitled "Excellence in schools" (issued 67 days after the electoral victory in May 1997) outlined the Government's design for change. Emphasis on education-as-investment and on competitiveness tends to undermine education which is defined by the objective of strengthening the ties which bind people.[7] The planned introduction of citizenship education (see section IV D 2) is expected to remedy this slant.

III. INTERNATIONAL DIMENSIONS: RIGHTS-BASED EDUCATION

20. The Government's definition of education, both domestically and internationally, emphasizes its role as the pathway out of poverty. The 1997 white paper "Eliminating world poverty: a challenge for the 21st century" committed the Government to refocusing international cooperation on pro-poor policy and allocations and it also introduced a rights-based approach. The Special Rapporteur is very much appreciative of this precedent, which gives hope for elevating human rights from the margins of international development cooperation into its core. The Government's commitment to rights-based development is accompanied by its concerted effort to increase resources for the poorest countries, especially through debt relief. The rights-based approach can only be meaningful if a rhetorical recognition of the basic rights of the poorest people in the poorest countries is reflected in the availability of resources necessary for the implementation of governmental human rights obligations and the Special Rapporteur welcomes the Government's emphasis on resource allocations in any plans for the attainment of anti-poverty or development goals.[8] The realization of such goals is a necessary foundation upon which the recognition and promotion of human rights can be built.

21. Ensuring that debt relief has a positive impact on human rights requires redirection of funds earmarked for debt servicing towards long-term investment in education. Much as it is generally known that such a redirection benefits the poorest people and the poorest countries, it has not been made a priority until recently. The Government has taken a leading role in debt relief and has been instrumental in facilitating the agreement reached during the Group of 8 Cologne meeting (in June 1999) and the subsequent one in September 1999 at the annual IMF/World Bank annual meeting. At the time of the Special Rapporteur's visit, the prospects for eliminating obstacles to debt relief seemed good but it was much too early to discern whether promises would be converted into commitments, and commitments into allocations. She will report to the Commission on further developments in her forthcoming annual report (in December 1999) and her statement to the Commission (in April 2000).

22. The common Treasury and Department for International Development policy made possible tackling all major determinants of financial inflows and outflows with regard to developing countries, including debt servicing, trade and investment as well as aid. The Government's commitment to increase aid (by more than one quarter) represents a welcome departure from the recent trend of diminishing aid flows. The Government's new approach also entailed a merger between foreign and development policy, evidenced, for example, in the joint publication of annual human rights reports by the Foreign and Commonwealth Office and the Department for International Development. The affirmation of human rights as guidance for foreign policy has been accompanied by a pledge to make it ethical, while development policy is to be remoulded by the rights-based approach.

23 The Government has emphasized that it gives "social, economic and cultural rights the same weight as civil and political rights" and further committed itself to "using Britain's influence to seek the realization of the social and economic rights contained in the Universal Declaration for all the people in the world" [9] An immediate implication of this rights-based approach is the recognition of beneficiaries of any development intervention as subjects of rights, requiring the acceptance of their right to make decisions for themselves In education, this entails balancing the rights and freedoms of relevant adults (primarily parents and teachers, alongside the main State actors) against the rights and best interests of the child Children are given a formal right to decide for themselves only after they become adults The shift to rights-based education thus promises a long-overdue change

24 In May 1999, the rights-based approach was applied to education in "Learning opportunities for all a policy framework for education", which linked education (defined as acquisition of knowledge and skills) to the principal objective of poverty eradication The conceptual underpinning was the vicious circle in which poverty was seen to be caused by lack of access to education, and lack of education then caused the perpetuation of poverty Rupturing this vicious circle necessitates long-term investment in education so as to enable its beneficiaries to become economically self-sustaining and to generate revenue needed for investment in the education of the coming generations

25 The "Policy framework" affirms that Governments have the primary responsibility for financing primary education, thus explicitly reaffirming one of their principal human rights obligations Its additional rationale is to enable children to become economically productive adults and to prevent them from being economically exploited as children The linkages between education and employment and the role of education in the elimination of the exploitation of child labour require thoughtful design Rights-based strategies ought to adapt education to the circumstances prevailing in the countries, communities and families where the children are This requires resisting the temptation to export models of education suited to industrial or industrializing countries, or to assume that secondary education is accessible to children who complete primary school, or to found education upon a vision of access to employment, in circumstances where the fate of most school leavers is what is alternatively called self-employment or the informal sector

26 The Special Rapporteur is fully aware of the novelty of rights-based education and the conceptual challenges which its operationalization entails and welcomes this pioneering effort

IV DOMESTIC FRAMEWORK

27 There is no explicit recognition of the right to education in English law The United Kingdom is party to international human rights treaties which require such recognition, but the absence of a written constitution (where recognized human rights are usually listed and defined), the complexity of legislation dealing with education and the variety of jurisprudence addressing various facets of the right to education combine to prevent a clear-cut assessment of the nature and scope of the right to education

28 The 1998 Human Rights Act has provided for direct applicability of the European Convention on Human Rights, the Act is planned to come into force on 2 October 2000 This

legislative change has introduced into the domestic legal systems those rights that are defined in the European Convention, within the limitations embodied in the United Kingdom's reservations. Because the European Convention does not recognize social and economic rights, the Government's tendency to conceive social and economic rights as "programmatic objectives rather than legal obligations"[10] is likely to continue. Likewise, the reservation affecting the right to education continues.[11] The right to education is thus confined to parental rights concerning their children's education and non-discriminatory access to the existing public educational institutions, further limited by the qualification that the Government's financial obligations remain reasonable. The recent increase in public funding for education is planned to bring it up to 5 per cent of GNP in 2001-2002,[12] still leaving the United Kingdom at the bottom of the Organization for Economic Cooperation and Development (OECD) ranking, much lower than Sweden (9 per cent) or Canada (7 per cent), and just above Italy, Turkey and Greece.[13]

A. Human rights in education

29. Statutory enactments relating to education do not use human rights language nor do they mention international human rights law. Where individual rights are mentioned, these relate to parents who have been allowed to challenge school admissions as of 1980.[14] Wide publicity for schools' league tables makes admission of their children to as good a school as possible crucially important to most parents. As the number of applications to the highest ranked schools exceeds their capacity many times over, the postulated parental choice in reality becomes the schools' choice.[15] Such choice can be - and is - challenged by parents before appeal panels, as they were named in 1998. Children of compulsory school age have guaranteed access to publicly-funded schooling, but their admission to a specific school creates continuous controversy and triggers litigation.[16]

30. A great deal of jurisprudence has developed on the basis of parental challenges of admissions or expulsions of their children, the conditions in schools (especially safety and hygiene), methods of teaching and school discipline. Human rights dimensions of education are litigated but such jurisprudence is found under education law, while no analysis has yet identified the nature and scope of human rights which this jurisprudence outlines.

31. Schooling is seen as "a contract between school and parents"[17] and the child does not have legal standing; children are thus absent as actors in this process although it is aimed at their learning. The Committee on the Rights of the Child recommended, for example, the affirmation of the right of the child expelled from school to appeal that decision.[18] Recent domestic developments provide additional incentives for a conceptual shift towards the child as the subject of the right to education. Studies leading to the requirement of written home-school agreements as of 1 September 1999 highlighted the finding that "pupils were very keen to sign. For many pupils it is the first document they are asked to sign and they feel very 'grown-up' and take it very seriously".[19] The Special Rapporteur feels that such findings point towards the recognition of the child as the subject of the right to education.

32. The emphasis on parental rights has visible effects on children in the care of the State. Where the State acts *in loco parentis*, with the local authority acting as a corporate parent, it has regularly proved unsuited for this task: three quarters of children in care have been found to leave compulsory schooling having obtained no qualification.[20]

B Discrimination or social exclusion?

33 The term "social exclusion" was developed in the European Union to denote the marginalization of individuals through economic deprivation and social isolation. The emphasis on "social" - as distinct from "statal" - reflects the diminished role of the State, while "exclusion" questions the postulated inclusiveness of social policies. Social exclusion could be defined as a denial of social rights but human rights language is not used; terms like "disadvantage" or "deprivation" are used instead of "denial of equal rights" or "discrimination". The term "social exclusion" has not been defined by the European Union nor by the United Kingdom[21] and encompasses divergent phenomena, ranging from expulsion from school to teenage pregnancy. The affected people straddle categorizations by race, gender, ethnicity, provenance and class.[22]

34 The existing legislative framework prohibits discrimination on some grounds but not on others. The Sex Discrimination Act of 1975 (and the associated Equal Opportunities Commission), the Race Relations Act of 1976 (and the associated Racial Equality Commission), the Disability Discrimination Act of 1995 (and the planned Disability Rights Commission) form the pillars of the system. There is no legislation relating to discrimination on the grounds of religion[23] or language, while the categorization by class has thus far escaped a legislative link with equality of opportunity and treatment. The Committee on the Elimination of Racial Discrimination noted "the non-incorporation of the full substance of the Convention"[24] in domestic law and the Special Rapporteur endorses this finding, emphasizing that the absence of an explicit prohibition of discrimination on all pertinent grounds prevents the identification of rights that are unequally enjoyed, with a view to their equal attainment.

35 The census provides an opportunity for self-classification of individuals into ethnic categories, which combine race, colour, ethnicity and provenance.[25] Religion or language are not recorded, nor is ethnic categorization applied to (or by) individuals who define themselves as "white". Overlapping grounds for discrimination (race and religion and language, for example, or sex and provenance and religion) are made invisible. What was termed "ethnic monitoring" was introduced in 1990-1991 to develop a profile of pupils according to their ethnic background, mother tongue and religion - such information being sought from parents on a voluntary basis.[26] Since the provision of such data is not obligatory, the picture obtained is not comprehensive.

36 The proportion of ethnic minority learners in compulsory education is estimated to be more than twice the ethnic minority share in the adult population (12 per cent in school, 5 per cent in the adult population).[27] A part of the reason for this is the different age pyramid: half of the ethnic minority population is younger than 25, compared to less than one third of the white population. The existing statistics reflect the diversity encompassed by the term "ethnic minority learners". English is recorded as an additional language for 8.4 per cent of the 11.8 per cent of primary school pupils classified as "ethnic minority", while it is not known how many learners classified as "white" do not have English as their mother tongue. Learners classified as "any other minority ethnic group" amount to 2.1 per cent, exceeding the proportion of Chinese (0.3 per cent) and Bangladeshi (1 per cent) pupils. The notion that educational performance decreases with darker pigmentation is belied by data showing that white boys with a working-class background may be found performing worse than their Chinese or Indian counterparts.[28]

37 The Special Rapporteur is concerned about the customary reference to all non-white people as "ethnic minorities" because this all-encompassing extension of the term "ethnic"or "minority" does not conform to international human rights law It is too broad to allow for the identification of the pertinent internationally prohibited grounds of discrimination, to further lead to studying their interplay and multiplication in the case of specific communities and individuals At the end of her mission, the Special Rapporteur noticed that all government officials she had talked with were white, which perhaps provides one possible explanation for the continued utilization of the term "ethnic minorities" to refer to non-white people

V HUMAN RIGHTS OBLIGATIONS

A Availability

38 A widespread, if erroneous, image of the right to education equates it with availability of schools and teachers Where schools are available, as is the case in England, further questions would then not be asked, precluding the inquiry from advancing from statistical availability of schools to the right to education This right entails, besides availability of schools, governmental human rights obligations to make schooling accessible, acceptable and adaptable

39 Western industrialized countries introduced all-encompassing compulsory education in earlier stages of their development, linking mass education to the process of industrialization, for which England was the pioneer A specific feature of its Englishness was the separation between private and state schools, boarding and day schools, as well as between general and/or academic from popular and/or vocational education, which survived all attempts to bridge the abyss between the two

1 Schools

40 While schools are - statistically speaking - available in England, this by itself does not exhaust the need to inquire into the human rights dimensions of availability Vast differences exist among institutions encompassed by the common name "school" and are expressed in popular references to "posh" and "sink" schools, providing schooling of very high and unacceptably low quality The latter have been a principal target of the Government's policy of "naming" and "shaming", the identification of the worst performing (called failing) schools with the intention of bringing their performance to the minimal acceptable level

41 As has been described above (in section I B), schools are ranked according to the performance of their learners in tests, and this ranking reinforces the heritage of stratified education Output-related ranking (i e performance and efficiency targets) inevitably favours selecting learners by their likelihood to perform well and by orientating the contents and methods of teaching to enhance their success in tests The underlying rationale discourages the investment of time and effort necessary for those learners who are unlikely to do well because of disabilities or difficulties or because they lack competitive drive The underlying rationale is institutionalized competition between schools and between learners Glossy colour brochures whereby individual schools target parents so as to enhance the parental demand for their educational services, or schools' annual meetings with parents (resembling shareholder

meetings), would seem incomprehensible to those who define education as a public service and/or a public good, or by the best interests of each child as guidance for the learning process which schooling should facilitate.

2. Teachers

42. The Government has acknowledged that its reform of the teaching profession has been the most comprehensive but also the most controversial.[29] The Special Rapporteur was often reminded of the shortage of teachers in many conversations she had, and this has been a constant theme in the domestic media. Difficulties in the recruitment of teachers have been a consequence of the low prestige of the teaching profession resulting from the cumulation of their loss of professional autonomy, long working hours (estimated at an average 51 hours per week) and the expectations upon teachers to solve most, if not all, social problems.

43. Teachers are employed by local authorities or by the governing boards of individual schools, their basic conditions of service and salary are determined by law. Ongoing changes aimed at increasing teachers' salaries on the basis of their pupils' performance are reminiscent of the performance specifications which were the basis for teachers' salaries in the period 1862-1890 ("payment by results"), through annual age-specific subject-based testing of pupils.[30]

B. Accessibility

44. The United Kingdom introduced free primary education in 1944, well before it was required to do so by international human rights law. Attendance at school is compulsory between the ages of 5 and 16, while the age range encompassed by the statutory regulation of education has been increased to 2 to 19, extended further through the introduction of lifelong learning.

45. Education has been extended downwards through the Government's policy of enrolling four-year-olds in pre-school education. The Government has introduced nursery education for all four-year-olds and is planning to increase the coverage to three-year-olds. Learners in independent schools can be as young as six weeks.[31] Such pre-compulsory education has not been defined in terms of entitlements.

46. Access to schooling for those above 16 is the subject of a maze of legislation and government special projects. Post-compulsory education has affirmed a new right to time off for studying for those between 16 and 18 who are identified as disadvantaged.[32] The school-leaving age of 16 has proved to be too low for learners to be able to secure a livelihood, because the demand for young people with a low level of education and qualifications has plummeted. Educational reforms have shifted the emphasis towards labour market demands, marketable skills and learning to compete. As the youth labour market has continued shrinking, particularly with the collapse of mass industrial production, which has particularly affected young men, education has been lengthened and vocationalized, signalling the transition from an industrial to a post-industrial stage. The process of lengthening education is likely to gradually evolve towards defining individual entitlements and the corresponding obligations of the public authorities, although the usage of human rights language does not seem likely.

1. Compulsory education

47. While of compulsory school age, "pupils are entitled by law to an education suitable for their age, ability, aptitude and any special educational needs they may have".[33] The corresponding obligation to make education available has been devolved to the local education authorities. Access to school is defined broadly to encompass all resident children, regardless of their citizenship, or temporary or permanent residence, and thus includes children in care, child offenders, asylum-seekers, refugees and Travellers. Such children have guaranteed access to schooling but no choice. The criterion of availability is thus regularly met, the criterion of accessibility is often reversed and schooling is provided where the children are, even if the environment is not learning-friendly, while fulfilment of the criteria of acceptability and adaptability routinely leaves a lot to be desired.

48. Education is proverbially held responsible for all social ills and simultaneously expected to solve them. It is also expected to prove its worth in England in very many ways: from improving the literacy and numeracy of the youngest learners, to raising the overall educational performance of all, to offering a world class educational service and contributing to the country's export performance. The one term that the Special Rapporteur heard often from educationists was "value-added". This term reflects a search to identify and quantify the value that schooling adds to the predictable educational performance of learners. That the child's family background is a strong determinant of the child's educational performance is well known: the educational development of 22-month-old infants from the highest social class is 14 per cent superior to those from the lowest class.[34] This gap is likely to expand with time into an abyss unless there is a comprehensive, sustained and well-resourced strategy to equalize opportunities and - in a long-time perspective - educational attainment.

49. The Government has developed an ambitious short-term strategy "designed to raise performance in primary schools beyond any levels previously achieved and at a faster rate than ever before".[35] Eradication of child poverty is a long-term objective, to be attained within 20 years.[36] The immediacy of the need to improve educational performance heightens the pressure on schools by implicitly demanding uniformly improved attainment. Schools' intake, however, is a strong determinant of the level of their educational performance. The search for the difference that the quality of schooling can make has focused on the term "value-added". The underlying rationale has been exemplified in the Government's motto that poverty is no excuse.

50. It is planned for child poverty to be eradicated within 20 years, while improved educational attainment of poor children is expected immediately. The multiplication of factors that exacerbate the influence of poverty on poor educational performance (such as family environment, provenance or mother tongue) necessitates, in the Special Rapporteur's opinion, a clear identification of the influence and confluence of specific factors, especially those that coincide with the internationally prohibited grounds of discrimination (such as race, ethnicity, gender, religion, language, social origin or disability).

(a) Children expelled from school

51. A conceptual conflict between the child's right to education and the child's duty to attend school is embodied in a series of statutory requirements inherited from the pre-human-rights era. Because education was conceptualized as a duty rather than a right, parents (or the State in loco parentis) had the duty to ensure that their children received education, the child had the duty to attend school regularly (failure to do so was punished as an offence of truancy), while the local authorities have been responsible for enforcing regular school attendance. Another, more recent, conceptual conflict emanates from the clash between the child's duty to receive education and expulsion from school.

52. Permanent exclusions from school increased from 3,000 in 1990-1991 to 13,500 in 1996-1997, and then decreased to 12,300 in 1997-1998.[37] This decrease could be an early result of the Government's pledge to reduce resort to expulsions. The figures encompass both primary and secondary schools and thus reach beyond compulsory school age. Most exclusions affect learners aged between 12 and 15, who are thus of compulsory school age. Learners with special needs have had the highest rate of exclusion (seven times the average), black learners are over-represented four times, while Chinese learners are under-represented three times. 84 per cent of excluded learners are boys.[38]

53. Reasons for expulsion are not known because exclusion is the prerogative of each school. They range from pregnancy, to a seven-year old's sticking out his tongue at a teacher to bullying other pupils or teachers. The punishment is diversion out of school into periodic tuition which gives the expelled children about 10 per cent of schooling.[39]

54. Some of the factors accounting for such a large number of exclusions have been traced to competitiveness. The seven-fold likelihood that pupils with special needs will be excluded has been associated with the improvement of school's performance after underperforming pupils were excluded.

(b) Children deprived of their liberty

55. Children deprived of their liberty within the compulsory education age range (below 16) have a statutory entitlement to education, which is set at 15 hours per week. There is a proposal to double the number of hours to 30.

56. Children can be imprisoned as of the age of 10 (the minimum age of criminal responsibility[40]) although the term used is not "imprisonment" but "secure accommodation" and they are not to be referred to as "children" but as "youth". A sad feature of the system is that 50 per cent of children remanded in custody never receive a custodial sentence[41] and so the experience of imprisonment, as well as the brutalization which it often entails, could - and should - have been avoided.

57. The scheme for dealing with the youngest suspects, detainees and offenders is laid down in a complicated legal framework which has been reformed recently. The Youth Justice Board (established in September 1998) is expected to unify policy-making and guidance as well as to obtain jurisdiction over various and diverse institutions under a central authority. The

Government's policy for deterring and preventing youth offending relies on education as one of its main pillars. Preventing youth offending anticipates that the Justice Board will "demonstrate that offending by children and young people is being prevented" by March 2002.[42] How negative evidence could be furnished within such a short period, namely that offending would have taken place was it not for specific interventions, remains unclear to the Special Rapporteur.

58. The Special Rapporteur visited Orchard Lodge, an institution which focuses on education as the means for preventing offending and re-offending by boys, combining an open regime for boys who are legally defined as being in need or at risk with secure accommodation for those defined as offenders. This institution provides a number of thoughtfully designed and imaginative features: the treatment is individualized to the point of one-to-one tutoring, the composition of the staff reflects that of the inmates (the majority of whom are black, young, and male) enabling the boys to have role models. The boys are motivated by making studying and learning count as success, which includes encouragement of the care and administrative staff to study and sit for exams together with the boys.

59. Such education-intensive institutions are rare, even for children and juveniles. The situation in adult prisons has been depicted by the Chief Inspector of Prisons, who remarked that "efficiency savings" reduced opportunities for education,[43] thus depriving inmates of one main means of preventing re-offending. His reports have revealed, for example, that only 30 out of 200 young inmates had access to education in one institution.[44] Access to education depends on the budgetary situation of specific prisons or can be rendered non-existent by lack of space. The orientation towards security and the legal heritage of prisoners having privileges rather than rights do not create an education-friendly environment. The lack of possibilities to secure their livelihood legally - for which education is essential - returns released inmates back to prison. This proverbial vicious circle is difficult to break. The Chief Inspector of Prisons has a number of ideas for improvement, some of which do not require any additional financial resources and can actually result in savings. One of these is to convert prisons from "schools of crime" into "schools-out-of-crime" by encouraging prisoners to teach other prisoners.

(c) Travelling communities

60. Gypsy and Traveller children are especially disadvantaged in education, there are data indicating that half of them may be classified as having special educational needs.[45] Special funding, known because of its legislative basis as "Section 488 grants", has been allocated to provide additional help for Gypsies, Travellers and refugees. Initiatives have been undertaken to improve the school performance of Travellers but inadequate emphasis has been placed on the attitudes of the majority, both teachers and learners. An ongoing review of the curriculum has emphasized freedom from discrimination and stereotyping, as well as the need to recognize diversity and inclusiveness.[46]

61. The Government has emphasized its efforts with respect to education of Gypsy and Traveller children in its report under the Convention on the Rights of the Child, but the Special Rapporteur is concerned about the formulation used, whereby these children "are entitled to have access to schools in the same way as all other children".[47] For travelling communities, access to schooling which does not accommodate the children's lifestyle entails a rupture and questions the enjoyment of their freedom of movement and residence. The movement of Travellers' families can be involuntary when they are evicted because their residence has been determined to

be illegal. Children's school attendance is necessarily interrupted, while two government policies (the suppression of illegal camping and the enforcement of school attendance) undermine each other.

62. The multi-layered discrimination which affects Gypsy communities, coupled with the inter-generational transmission of the lack of access to education and thus the demand for it, constitutes, in the view of the Special Rapporteur, a typical case where the spirit and the wording of the Convention on the Rights of the Child mandate rights-based education. The small numbers of the Gypsy and Travelling communities facilitate a focus on the rights and the best interests of the child.

(d) Children with physical and learning disabilities

63. The Disability Discrimination Act is gradually being implemented and a Disability Rights Commission is expected to be established in April 2000. The Government has committed itself to reviewing all education policies for their implications for children with special educational needs,[48] thus implicitly responding to the critique that the impact of the league tables has been to penalize schools' investment in learners with disabilities and thus to hamper the adaptation of mainstream schools to children with disabilities, segregating them in special schools.

64. Entitlements for learners with special needs to additional help depend on their being "statemented". This un-English linguistic construct denotes that such pupils are issued with a statement which formally affirms their special educational needs. A fairly large proportion of learners of compulsory school age (250,000 or 3 per cent) are "statemented" giving them an entitlement to have these special needs met.[49] This effort by parents to secure an explicit entitlement for their children testifies to the fact that special educational needs may otherwise remain unmet. This is also affirmed in the large numbers of expulsions from school of learners with special needs. In the Special Rapporteur's opinion, such a rationale highlights the importance of the best interests of each child as guidance for education.

2. University education

65. The introduction of tuition fees for university education defied the explicit requirement of the International Covenant on Economic, Social and Cultural Rights (art. 13.2 (c)) that access to higher education should be determined by individual capacity, while equal access should be secured through progressive introduction of free education.

66. The tuition fee of £1,025 for an academic year (25 per cent of the average tuition costs) and the conversion of previous grants into loans has made studying expensive. Student loans were introduced in 1990 and administered by the Student Loans Company, wholly owned by the Government. As of September 1994, student grants were reduced and then phased out, a new student loan scheme was introduced in September 1998. It allows students access to income-contingent loans, repayable after graduation.

67. The funding of university education has been shifted towards students (and their parents), with diminishing public funding. Tuition fees were introduced just one year after the previous

Government had announced that it "had no plans to make students contribute to their fees".[50] A part of the background to the introduction of fees was consecutive reductions in public funding for universities: the public funding per student was halved and research replaced teaching as the main basis for the funding of universities. Another part of the background was the widespread perception of university education as being elitist. The Dearing Report (the report of the National Committee of Inquiry into Higher Education) reasoned that students were benefiting because their degrees improved their employment prospects and led to higher salaries, hence graduates should retroactively contribute to the cost of their education. The proposal was to introduce loans, which would be repayable after graduation and after the graduate began earning an income that would not make the repayment too burdensome.[51]

68. Tuition fees are paid in full by one third of students. One third - with lower incomes - pay a proportion of the fees, and one third of students, from the lowest income category, are exempt from payment. The money generated by tuition fees was intended to be used to broaden access to university education. A frequent diagnosis was that access to university education necessitated "being male, attending a selective school and having parents in professional/managerial occupations".[52] The Government therefore pledged "increasing and widening participation, particularly from groups who are under-represented in higher education, including people with disabilities and young people from semi-skilled or unskilled family backgrounds".[53] A great deal of concern has been expressed about the effect being opposite to this government pledge. While it is much too early for any conclusive assessment, the initial data released by the Universities and Colleges Admissions Service (UCAS) on enrolments in 1998 point out that half (53 per cent) of all admissions to university degree courses originated from the highest two classes (Professional and Intermediate), by far exceeding their representation in the general population and affirming that the most significant predictor of access to university education is socio-economic status.[54] The number of 1998 admissions for the highest (Professional) category showed only a slight decrease (-2.4 per cent) in comparison with 1997. A larger decline in the number of admissions (-5.9 per cent) was revealed for the lowest (Unskilled) category.[55] It bears repeating that the novelty of tuition fees and student loans makes any such data only tentative, but worrisome because they do not point in the direction of enlarging access to university education for the poorest, as was intended.

69. The Special Rapporteur deems that the Government's pledge to equalize - not only maximize - participation in university education requires putting into practice its commitment to use "funding as a lever for change"[56] so as to overcome the financial obstacles in accordance with their size, namely investing the most in those whose access is the most hampered.

C. Acceptability

70. Criteria for acceptability of education are monitored and enforced by the Office for Standards in Education, known by its acronym OFSTED, through inspections. The purpose is to ensure that those schools that are defined as falling below minimal acceptability (called "failing schools") are officially warned so that measures could be undertaken to improve them, or they are closed down. The Government's often repeated statement is that poverty is no excuse for failure, requiring schools to offer an acceptable educational performance regardless of the poverty of their pupils or the school's own facilities.

1. Non-English-speaking learners

71. Unlike the United Kingdom, England is perceived as a unilingual country, although a range of languages has been introduced through migration. These are indirectly detected through the association between ethnic and linguistic minorities. However, the term "linguistic minorities" is never used nor is there legislation addressing discrimination on the grounds of language.

72. Instruction is provided in English and the obstacle which this constitutes for learners with English as their second or third language is acknowledged through compensatory measures to facilitate their learning English. Because English is one of the subjects in which learners are tested from the age of 7 (along with Mathematics and Science), it is likely that underperformance in these tests may not reflect the learners' aptitude for schooling, but rather the fact that English may be their second or third language. Private investment in bilingual education has proved beneficial, with bilingual learners outperforming unilingual English speakers.[57]

73. The level of fluency in English has been identified as an important determinant of learners' performance, although it tends to be subsumed under racial or ethnic difference. Identifying "EAL pupils" (those with English as Additional Language) and helping them to overcome linguistic obstacles avoids mistaken attribution of their problem to race or ethnicity or learning difficulties. What became known as "section 11 grants" (based on section 11 of the 1966 Local Government Act) provided funding for additional recruitment to assist non-English-speaking learners. This funding does not seem to meet the existing demand, which itself has been incompletely identified because the recording of mother tongue on admission to school pertains to data that are provided on a voluntary basis.

74. It can be inferred which languages are the most widespread from the choice of languages made by the Home Office in which to promote electoral registration: Bengali, Chinese, Greek, Gujerati, Hindi, Punjabi, Turkish and Urdu.[58] The Special Rapporteur heard about the difficulties encountered by teachers of Somali, Romani or Albanian children and assumes that a frequent estimate that 800 languages are spoken in London alone may be accurate.

2. Teenage pregnancy

75. An ongoing government initiative is aimed at reducing the number of teenage pregnancies, as well as the social exclusion of teenage parents, almost exclusively mothers. In his foreword to the Teenage Pregnancy Report, the Prime Minister called it the country's "shameful record".[59] England's statistical profile reflects a gulf which divides it from continental Europe, as well as revealing problems within education. The paucity of sex education in primary schools in one facet; the prospects and role models for the category still referred to in popular parlance as "working class girls" is another.

76. This government's initiative requires no less than breaking the vicious circle of mutually reinforcing influences driving girls to pregnancy and childbearing while they are still children. The geographical profile of teenage pregnancy is well known (it is six times higher in the poorest than the richest areas) as is the profile of teenage mothers: they are 10 times as likely to

originate from a family classified as "unskilled manual" as from one classified as "professional", twice as likely to have been in care, fostered or raised by a teenage mother and to have left or been expelled from school.

77. Career prospects remain gender-stereotyped. Almost half of women work part-time and tend to be segregated into jobs in sales or work as check-out assistants, clerks or secretaries. Although girls outperform boys in tests assessing their educational accomplishment, they are nevertheless doomed to low-paid, low-skilled, low-status occupations.[60]

78. The Special Rapporteur has noted that the term "gender" is used in some Government publications and not in others, it is notably missing from some addressing teenage pregnancy.[61] The biological fact that girls get pregnant (while boys do not) has slanted the prevention of pregnancy towards girls and defined contraception as a female concern. Many statutory and voluntary services are run by women and target only girls; medical doctors in general practice can only provide contraceptive services to boys at the boys' own expense because they are reimbursed only for contraceptive treatment of women.

79. The role of schools in imparting self-protection knowledge and skills is left to individual schools. Primary schools are required to have a policy on sex education, this policy can be not to have any sex education. The 1993 Education Act mandated publicly-funded secondary schools to provide sex education (not defining what should be taught, how and by whom) and affirmed the parents' right to exclude their children from sex education. Where provided, sex education remains an extra-curricular subject, often incorporated in the broader subject of personal, social and health education. Many disincentives hamper the introduction of sex education[62] and do not seem to be effectively addressed.

80. The Special Rapporteur is fully aware of the obstacles that ought to be overcome, and that have been overcome in many countries. Governmental human rights obligations stemming from the best interests of the child and the goal of gender equality impose upon the Government the obligation to take the lead in overcoming such obstacles.

D. Adaptability

81. The adaptation of education to changes in society and in the economy is a constant process and requires comprehensive and continuous monitoring of influences on education, as well as the influence that education is expected to have in furthering change.

1. From sex to gender

82. Inequalities span the individual and structural levels and a great deal of effort is necessary to differentiate between the two. Recording inequalities requires delineating different grounds of discrimination that may be detected in access to schooling, treatment in school, outcomes and impact of schooling. The insistence of the Convention on the Rights of the Child on the rights and the best interest of each individual child requires differentiating between structural and individual factors so as to identify and address obstacles at both levels.

83. Data on school performance highlight boys' underachievement, both in the white and non-white population,[63] turning around a frequent gender stereotype whereby girls' performance should be improved. Single-sex schools constitute 5 per cent of all schools (more often girls' than boys' schools) and they continue because "evidence suggests that girls are particularly likely to do well in single-sex schools".[64] In co-educational schools, 85 per cent of teachers are women, which probably constitutes one of the reasons for the educational under-performance of boys. The advantage of shifting emphasis from sex to gender is, in the Special Rapporteur's view, that it requires studying both sexes, as well as their relationship, and spans learners and their teachers.

2. Oscillating purposes of education

84. The uniform verification and evaluation of the educational performance of learners and schools prioritizes subjects which yield easily to quantification, as well as methods of instruction which facilitate learners' success in testing. The underlying rationale has been the focus on basic knowledge (the three Rs). The National Advisory Committee on Creative and Cultural Education has pointed to culture and creativity as general functions of education,[65] emphasizing that education was undermined by the rationale, structure and prescriptive nature of the curriculum. The continuous presence of religious education in the curriculum and pastoral care in school add a spiritual dimension. The planned introduction of citizenship education anticipates adding some content of human rights education to the curriculum.

85. The process of designing citizenship education was ongoing at the time of the Special Rapporteur's mission and the outcome was not yet known. She is concerned about the image of human rights in the preparatory documents, which may become reflected in the future curriculum. It seems to her that "human rights" are perceived as different from and alien to the rights and freedoms that learners will recognize in their everyday lives - their rights as subjects of the right to education, as future employees, as future parents or voters. "Human rights" seems identified with international issues and foreign countries and dissociated even from concepts such as equal opportunities and gender equality.[66]

86. There is a great need to introduce human rights education that would respond to everyday problems. The Commission for Racial Equality has pointed to the "rising levels of openly acknowledged racial prejudice",[67] which raises concerns about the absence of countervailing influences in education. The Chief Inspector of Schools has emphasized that one in five schools pays too little attention to non-European cultures.[68]

87. Individualism and competitiveness as root values clash with solidarity and community. Parents' concerns about the educational attainment of their own children easily leads to ability-based screening and the consequent exclusion of less able children. Inequalities between learners and schools tend to become accentuated and exacerbated, not perceived as a human rights issue that ought to be addressed so as to familiarize children to accepting and assisting their peers, but rather as a legitimate differentiation enhancing individualism and competitiveness. This has created a paradox: schools are expected to instil values of solidarity and individual competitiveness at the same time.

VI. CONCLUSIONS AND RECOMMENDATIONS

88. Education has been prioritized by the Government both domestically and internationally, but international and domestic features of education are conceptually distinct. The rights-based approach is promoted at the international level, while silence prevails with regard to the right to education and even more with regard to rights in education at the domestic level. The Special Rapporteur fully supports the Government's conceptual shift to rights-based education and hopes that this could provide a welcome opportunity for its introduction at the domestic level.

89. The Government deserves a great deal of credit for launching rights-based education, thus moving towards incorporation of human rights in mainstream development cooperation, and for the parallel focus on increasing resources necessary to translate into practice the right to education. Translating human rights into sectoral and country strategies cannot be fast or easy. The Special Rapporteur commends the Government for starting this process and, as she stated during her mission, is willing to assist the Government in every possible way.

90. The profound change stemming from making the European Convention on Human Rights directly applicable has opened the way for broadening and deepening human rights protection on the basis of regionally (and perhaps later globally) developed international human rights law. This will gradually transform and internationalize English education law. The Special Rapporteur sees in this change an opportunity to broaden the existing image of human rights. The Convention on the Rights of the Child seems a particularly well-suited starting point as it offers learners, from the youngest age, a clear and easy identification with its spirit and wording and the immediate possibility of its translation into practice through the creation of a human-rights-friendly school. The Special Rapporteur is also concerned about the inherited legal status of the child as the object of a legally recognized relationship between the school and the child's parents rather than the subject of the right to education and of human rights in education. She hopes that the spirit and wording of the Convention on the Rights of the Child will gradually influence English educational policy, law and practice.

91. The long heritage of all-encompassing compulsory education in England leaves few categories of children without access to school. The Special Rapporteur deems that closing these gaps deserves priority. In two cases - children deprived of their liberty and Traveller children - schooling ought to be provided where the children are. This requires imagination, flexibility and - most importantly - the Government's political and financial commitment to ensuring that education is available, accessible, acceptable and adaptable. Multiple discrimination is routinely found in the chain of causation which deprived such children of education, thus triggering the full range of human rights obligations relating to the eradication of discrimination.

92. The Special Rapporteur suggests that the forthcoming introduction of citizenship education in compulsory schooling should be used as an occasion for overcoming widespread misperceptions whereby, for example, gender equality is perceived as distinct from racial equality while both are seen as distinct from human rights. Moreover, the choice of citizenship education provides an opportunity for delivering the message that children are citizens rather than citizens-to-be. The inter-relatedness of human rights makes it possible to build conceptual bridges between different forms of discrimination, their causes, effects and impact, and to develop comprehensive human rights education aimed at addressing and redressing everyday issues that learners can easily identify with.

93. The link between education and employment (evidenced by a governmental structure in which a single ministry deals with both) has constituted the pillar of the Government's policy, with a clear commitment to enable people to become economically self-sustaining. The orientation of education towards enhancing individual competitiveness has resulted in competition between children and their schools. The Special Rapporteur is concerned about the effects of competitiveness on children with disabilities. In her opinion, inclusiveness requires enhancing the adaptation of schooling to children with disabilities.

94. The image of education as an investment in future earnings is clearly reflected in the introduction of tuition fees for university education. The apparent discrepancy between this change and the wording of the International Covenant on Economic, Social and Cultural Rights deserves more attention than it has received thus far. This change does not diminish the Government's human rights obligations relating to availability, accessibility, acceptability and adaptability, however. The Special Rapporteur is particularly concerned about access to university education for those who cannot afford its direct and opportunity costs and urges the Government to prioritize its commitment to utilize funds generated within education to improve accessibility for disadvantaged categories. Moreover, education is at the same time a human right and a traded service (both domestically and internationally) and thus the affirmation of the right to education and human rights in education acquire increased importance.

95. The Special Rapporteur suggests that a review should be undertaken of the notion of social exclusion from the human rights perspective, inspired by the advantage that would ensue from a focus on governmental human rights obligations. The cumulation of different grounds of discrimination, reinforced by class, requires unravelling the causes and contributing factors at the structural rather than at only the individual level. The Special Rapporteur feels that concepts such as "ethnic minority" (which merges race, colour, ethnicity, provenance, religion, language and social origin) or "social exclusion" (which combines an unpredictable set of phenomena within an unclear conceptual framework) hide more than they reveal. The advantage of applying existing international human rights law lies in its comprehensive delineation of the prohibited grounds of discrimination and the corresponding governmental obligations which, in the case of racial and gender discrimination, envisage structural alongside individual measures for the elimination of discrimination.

96. The conceptual framework for addressing differences in school performance between girls and boys could benefit from a shift of emphasis from sex to gender, and from a focus on all the human rights of girls and women, not only those in education. A gender analysis of education could facilitate the ongoing search for strategies to improve the school performance of boys, which is hampered by the previous emphasis on girls. The high percentage of female teachers in primary schools illustrates advantages that would ensue from the notion of gender balance. Post-schooling prospects for girls undermine the value of their educational performance, much as it is initially superior to that of boys. Too many slide into early pregnancy, single motherhood and the associated diminution of academic, vocational and professional opportunities. The inter-relatedness of human rights provides the comprehensive conceptual framework necessary to address such issues, which reach far beyond the sector of education.

97 The Government's overriding objectives in education are to raise standards for all learners, to tackle underachievement and to improve the performance of all learners, often expressed as the creation of a world-class education service. These objectives, admirable as they are, direct attention to output at the expense of a diminished concern over inputs (especially where they are needed to overcome the intergenerational transmission of disadvantage) and the process of education. The Special Rapporteur feels that a focus on the right to education provides a useful approach to broadening the common narrow - and erroneous - view of human rights as safeguards against governmental abuse of power to encompass governmental human rights obligations aimed at equalizing opportunities for the exercise of equal human rights. The closely related notion of rights-based education facilitates examination of the process of education from the viewpoint of rights and duties, freedoms and responsibilities of all relevant actors.

Notes

[1] The 1944 Act stated: "it shall be the duty of the parent of every child of compulsory school age to cause him to receive efficient full-time education suitable to his age, ability and aptitude", while the 1996 Act has only slightly altered that formulation: "the parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable (a) to his age, ability and aptitude, and (b) to any special educational needs he may have, either by regular attendance at school or otherwise".

[2] The then Secretary for Education, Kenneth Baker, introduced the Educational Reform Bill to Parliament thus: "We must give consumers of education a central part in decision-making. That means freeing schools and colleges to deliver the standards that parents and employers want." House of Commons, 1 December 1987, col. 771-772.

[3] English, Mathematics, and Science are core subjects and learners are tested against curriculum standards at ages 7, 11 and 14. The eight foundation subjects are History, Geography, Design and Technology, Information Technology, Music, Art, Physical Education and a modern foreign language. Religious Education is mandatory in primary schools, and sex education in secondary schools. Parents are entitled to withdraw their children from both.

[4] The Government's Annual Report 98/99, July 1999, pp. 15-16.

[5] Prime Minister's speech at the London School of Economics on 18 June 1999.

[6] Department for Education and Employment, The National Learning Targets Action Plan, London, March 1999, p. 4.

[7] Learning Works. Widening Participation in Further Education, report by Helena Kennedy for the Further Education Funding Council, June 1997, p. 6.

[8] H.M. Treasury and Department for International Development, "Debt relief and poverty reduction: a UK submission to phase 2 of the HIPC Review", London, July 1999, para. 25.

[9] Foreign and Commonwealth Office and Department for International Development, Human Rights. Annual Report for 1999, July 1999, pp. 11 and 15.

[10] Committee on Economic, Social and Cultural Rights, Concluding observations United Kingdom of Great Britain and Northern Ireland, E/C.12/1/Add.19 of 12 December 1997, para. 10.

[11] The reservation was made on 20 March 1952 with regard to the provision of article 2 of the first Protocol to the Convention which states that the State shall respect the right of parents to ensure that their children's education conforms to their religious and philosophical convictions, to specify that this principle is restricted by its compatibility with "the provision of efficient instruction and training and the avoidance of unreasonable public expenditure".

[12] Second Report to the UN Committee on the Rights of the Child by the United Kingdom, The Stationery Office, London, August 1999, p. 114.

[13] OECD, Human Capital Investment. An International Comparison, Paris, 1998, p. 37.

[14] The 1944 Education Act posited that "local education authorities shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents". This provision was repeated in the United Kingdom's reservation to the right to education in the first Protocol to the European Convention on Human Rights. Thereafter, this reservation created a great deal of debate concerning its nature and scope. It was initially defined as guaranteeing parental preference, then, gradually, as affirming parental choice. The 1994 Parent's Charter attempted to affirm parental choice, stating: "As a general rule, you now have a right to a place in the school you want, unless all the places at the school have been given to pupils who have a stronger claim for a place at that school." (Department for Education, Our Children's Education. The Updated Parent's Charter, London, 1994, pp. 9-10.)

[15] The Code of Practice for Admissions (issued by the Department of Education and Employment in 1998) allows individual schools "a fairly wide discretion", mandating them to use criteria which are objective, clear and fair. Admissions should not breach legislative prohibitions of racial and sex discrimination, but parents are allowed to exercise their preference even where it entails discriminatory effects. The Commission for Racial Equality highlighted a case (R v. Cleveland County Council ex parte CRE) in which parental choice of school by the criteria of racial and/or ethnic composition of learners was upheld. The rationale was that a subsequent education law prevailed over an earlier prohibition of racial discrimination. Commission for Racial Equality, Reform of the Race Relations Act 1976 (Summary), 30 April 1998.

[16] Parents can challenge a decision whereby their child is not admitted to the school of their preference through judicial review, which focuses on the procedure rather than the substantive criteria. The exercise of the statutory powers of the local education authorities can also be challenged through an application to the Commission for Local Administration in England

[17] Department for Education and Employment, Excellence for All Children Meeting Special Educational Needs, green paper, October 1997, para 5

[18] Committee on the Rights of the Child, Concluding observations (CRC/C/15/Add 34 of 15 February 1995, para 32)

[19] Department for Education and Employment, Home-School Agreements Guidance for Schools, London, 1998, p 13

[20] Department for Education and Employment, Social Exclusion Pupil Support, London, July 1999, p 12

[21] The Social Exclusion Unit, set up by the Prime Minister in December 1997 and reporting directly to him, defines social exclusion as "a shorthand term for what can happen when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environment, bad health, poverty and family breakdown", London, May 1999

[22] By the criterion of social class, individuals are classified into five categories The highest is Professional (I), followed by Intermediate (II) and Skilled Non-Manual (IIN), which are followed by Skilled (IIIM) and Partly Skilled Manual (IV), the lowest being Unskilled (V)

[23] The Commission for Racial Equality proposed in January 1998 that specific legislation be adopted to combat religious discrimination This proposal seems to have been suspended until an 18-month study into religious discrimination is finalized Annual Report of the Commission for Racial Equality January to December 1998, p 31

[24] Committee on the Elimination of Racial Discrimination, Concluding observations United Kingdom of Great Britain and Northern Ireland, CERD/C/304/Add 20 of 23 April 1997, para 4

[25] The 1991 population census introduced nine categories (White, Black Caribbean, Black African, Black Other, Indian, Pakistani, Bangladeshi, Chinese and Other) for which statistical data are available Unlike the population census, the school census makes the collection of data on ethnicity, religion and language optional The source of such information is parents rather than learners, and parents exercise their choice in cooperating or not

[26] Committee on the Rights of the Child, Initial report of United Kingdom of Great Britain and Northern Ireland, CRC/C/11/Add 1 of 28 March 1994, paras 92-94

[27] Department for Education and Employment, "Minority ethnic pupils in maintained schools by Local Education Authority Area in England - January 1999 (provisional)", London, 30 June 1999 Such data are derived from the annual school census and are reproduced as reported by schools

[28] Drew, D and Gray, J, "The fifth year examination achievements of black young people in England and Wales", Educational Research, vol 32, No 3, p 114

[29] Prime Minister's introduction to The Government's Annual Report 98/99, July 1999, p 6

[30] David, M E, The State, the Family and Education, Routledge, London, 1980

[31] Office for Standards in Education, The Annual Report of Her Majesty's Chief Inspector of Schools 1997-98, p 61

[32] Bridging the Gap - New Opportunities for 16-18 Year Olds not in Education, Employment or Training, report by the Social Exclusion Unit, presented to Parliament by the Prime Minister, July 1999, pp 71-73

[33] Committee on Economic, Social and Cultural Rights, Third periodic report of the United Kingdom of Great Britain and Northern Ireland, E/1994/104/Add 11 of 17 June 1996, para 254

[34] H M Treasury, Persistent Poverty and Lifetime Inequality - The Evidence, London, March 1999, para 3 06, p 29

[35] Department for Education and Employment, National Learning Targets - Action Plan, London, March 1999, p 2

[36] The Government's Annual Report 98/99, July 1999, pp 9 and 20

[37] Truancy and School Exclusion, report by the Social Exclusion Unit, May 1998, para 2 1, "Permanent exclusions from schools in England 1997/98 and exclusion appeals lodged by parents in England 1997/1998", Department for Education and Employment, SFR11/1999, 16 June 1999

[38] "Permanent exclusions from schools in England 1997/98 and exclusion appeals lodged by parents in England 1997/98, DfEE Statistical First Release", 16 June 1999

[39] Truancy and School Exclusion, report by the Social Exclusion Unit, May 1998, para 2 23

[40] Committee on the Rights of the Child, Initial report of the United Kingdom of Great Britain and Northern Ireland, (CRC/C/11/Add 1 of 28 March 1994, paras 67-73)

[41] Youth Justice Board for England and Wales, Annual Report and Accounts 1999, p 22

[42] Ibid , p 32

[43] Her Majesty's Chief Inspector of Prisons, Annual Report 1997/98, pp 30 and 32

[44] Report on an unannounced short inspection of H M young offender institution Werrington, 2-4 June 1998, by H. M Chief Inspector of Prisons, para 3 41

[45] Office for Standards in Education, "Raising the attainment of minority ethnic pupils - School and LEA responses", paras 8 and 36-38

[46] The proposed new curriculum refers to "citizenship education, including the study of the nature of democracy and its institutions and the rights and responsibilities of all members of society" which highlights the difference between citizens and other members of society Department for Education and Employment, The review of the national curriculum in England The consultation materials, May-July 1999, p 4

[47] Second Report to the UN Committee on the Rights of the Child by the United Kingdom, The Stationery Office, London, August 1999, p 146

[48] Department for Education and Employment, Excellence for All Children Meeting Special Educational Needs, Green Paper, October 1997, para 4

[49] The Government has openly acknowledged that parents seek statutory statements because this may be "the only route to funding to meet children's needs" Department for Education and Employment Excellence for All Children Meeting Special Educational Needs, Green Paper, October 1997, appendix 2, para 1

[50] Committee on Economic, Social and Cultural Rights, third periodic report of United Kingdom of Great Britain and Northern Ireland (E/1994/104/Add 11 of 17 June 1996, para 231)

[51] The Dearing Report, recommendations 78 and 79

[52] Gillborn, D and Gipps, C , Recent Research on the Achievements of Ethnic Minority Pupils, OFSTED (Office for Standards in Education), London, 1996, p 6

[53] Department for Education and Employment, Higher Education for the 21st Century Response to the Dearing Report, London, 1998, p 3

[54] Department for Education and Employment, National Adult Learning Survey 1997 Summary, London, 1998, p 11

[55] Universities and Colleges Admissions Service, Statistical Bulletin on Widening Participation, No 1, 1999, p 6

[56] Department for Education and Employment, Further Education for the New Millennium Response to the Kennedy Report, London, 1998, p 12

[57] Gillborn, D and Gipps, C , Recent Research on the Achievements of Ethnic Minority Pupils, OFSTED (Office for Standards in Education), London, 1996, pp 14 and 26

[58] Committee on the Elimination of Racial Discrimination - Fourteenth periodic report of United Kingdom of Great Britain and Northern Ireland, CERD/C/299/Add 9 of 2 December 1996, para 42

[59] Teenage Pregnancy Report, presented to Parliament by the Prime Minister by command of Her Majesty, Cm 4342, June 1999, p 4

[60] M Arnot and Others, Recent Research on Gender and Education Performance OFSTED (Office for Standards in Education), 1988, p 68

[61] The Teenage Pregnancy Report utilized the word "gender" only once, when describing the part of the national curriculum for science for 14-16-year-old learners which teaches them how sex is determinant in human sexual reproduction, as opposed to asexual reproduction which produces clones

[62] "Many of those involved in SRE are concerned that those who innovated would become the subject of unwelcome media attention Several school heads said that although they were proud of the quality of their school's SRE, they did not want, for this reason and because of the possible reaction from parents, to become known as 'good schools' for sex education." Teenage Pregnancy, Cm 4342, June 1999, p 40.

[63] The Chief Inspector of Schools has pointed out weak literacy skills among boys in both primary and secondary school Office for Standards in Education, The Annual Report of Her Majesty's Chief Inspector of Schools 1997-98, pp 23, 33 and 37

[64] Committee on the Elimination of All Forms of Discrimination against Women, third periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/UK/3 of 31 July 1995, p 49 and 55

[65] All Our Futures Creativity, Culture and Education, NACCCE report, May 1999, para iii

[66] Qualifications and Curriculum Authority, Education for Citizenship and the Teaching of Democracy in Schools Final Report of the Advisory Group on Citizenship, London, 22 September 1998, p 44

[67] Annual Report of the Commission for Racial Equality, January to December 1998, p 3

[68] Office for Standards in Education, The Annual Report of Her Majesty's Chief Inspector of Schools 1997-98, p 30